

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-RBxz-1A [v.3] (11/29)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Revenue Laws Technical Bill - Part II.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES
TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

...

SECTION 1.(a) G.S. 105-164.4(a)(3) reads as rewritten:

"(3) A tax at the general rate applies to the gross receipts derived from the rental of an accommodation. The tax does not apply to a private residence or cottage that is rented for fewer than 15 days in a calendar year or to an accommodation rented to the same person for a period of 90 or more continuous days.

Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation marketed by a facilitator includes charges designated as facilitation fees and any other charges necessary to complete the rental.

A person who provides an accommodation that is offered for rent is considered a retailer under this Article. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an accommodation rental marketed by the facilitator is completed and, within three business days of receiving the notice, the facilitator must send the retailer the portion of the sales price the facilitator owes the retailer and the tax due on the sales price. A facilitator that does not send the retailer the tax due on the sales price is liable for the amount of tax the facilitator fails to send. A facilitator is not liable for tax sent to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer from a facilitator are held in trust by the retailer for remittance to the Secretary. A retailer that receives a tax payment from a facilitator must remit the amount received to the Secretary. A retailer is ~~not~~ liable for tax on the amount the retailer charges the facilitator for the accommodation rental but is not liable for tax due but not received from a



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1 facilitator on charges designated as facilitation fees and any other charges
2 necessary to complete the rental due but not received from a facilitator. The
3 requirements imposed by this subdivision on a retailer and a facilitator are
4 considered terms of the contract between the retailer and the facilitator.

5 A person who, by written contract, agrees to be the rental agent for the
6 provider of an accommodation is considered a retailer under this Article and
7 is liable for the tax imposed by this subdivision. The liability of a rental
8 agent for the tax imposed by this subdivision relieves the provider of the
9 accommodation from liability. A rental agent includes a real estate broker, as
10 defined in G.S. 93A-2.

11 The following definitions apply in this subdivision:

- 12 a. Accommodation. – A hotel room, a motel room, a residence, a
13 cottage, or a similar lodging facility for occupancy by an individual.
14 b. Facilitator. – A person who is not a rental agent and who contracts
15 with a provider of an accommodation to market the accommodation
16 and to accept payment from the consumer for the accommodation."

17 **SECTION 1.(b)** This section is effective when it becomes law and applies to gross
18 receipts derived from the rental of an accommodation that a consumer occupies or has the right
19 to occupy on or after January 1, 2011.

20 **SECTION 2.(a)** A facilitator is not liable for an overcollection or undercollection
21 of sales tax or local occupancy tax if the facilitator has made a good faith effort to comply with
22 the law and collect the proper amount of tax as the result of the change under Section 31.6 of
23 S.L. 2010-31 regarding a facilitator's collection and remittance obligations imposed under
24 G.S. 105-164.4(a)(3), G.S. 153A-155(c), and G.S. 160A-215(c). This applies only to the
25 period beginning January 1, 2011, and ending April 1, 2011.

26 **SECTION 3.** G.S. 105-164.16(d) reads as rewritten:

27 "(d) Use Tax on Out-of-State Purchases. – Use tax payable by an individual who
28 purchases the items listed in this subsection~~tangible personal property other than a boat or an~~
29 ~~aircraft, digital property, or a service~~ outside the State for a nonbusiness purpose is due on an
30 annual basis. For an individual who is not required to file an individual income tax return under
31 Part 2 of Article 4 of this Chapter, the annual reporting period ends on the last day of the
32 calendar year and a use tax return is due by the following April 15. For an individual who is
33 required to file an individual income tax return, the annual reporting period ends on the last day
34 of the individual's income tax year, and the use tax must be paid on the income tax return as
35 provided in G.S. 105-269.14. The items are:

- 36 (1) Tangible personal property other than a boat or an aircraft.
37 (2) Digital property.
38 (3) A service."

39 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
40 law.